

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-03-12
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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued February 5, 2004)

Background

On January 21, 2003, Ms. Kay Stevens filed a written complaint with the Utilities Board (Board) alleging that Qwest Corporation (Qwest) had added an unauthorized charge of \$99 to her telephone bill for installation of a jack and wiring. She stated that her home had previously been wired for a second line, but the service to that line had been dropped approximately a year ago. When she called Qwest to ask the price for installing a second line, Qwest quoted her a price for the second line of a "one time" charge of \$15.52 plus regular monthly fees. When she received her bill, it contained a "one time" charge of \$15.52 for 2-line custom choice and an additional "one time" charge of \$99 for a jack and wiring. Ms. Stevens stated she called Qwest several times and asked the price of adding a second line and was

quoted several different prices. Ms. Stevens stated Qwest offered her a credit of one half the \$99 charge to resolve the matter, but she refused. She further stated that when the technician was in her home "maybe ten minutes" he never mentioned any additional cost. Ms. Stevens requested that the \$99 charge plus any taxes be reversed from her bill.

The details of the complaint are contained in informal complaint file number C-03-21, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

Upon receiving the complaint, Board staff attempted to informally resolve the dispute. On January 22, 2003, Board staff forwarded the complaint to Qwest for response.

Qwest responded by letter filed January 22, 2003, and stated that Ms. Stevens requested a technician even when told one was not necessary and the jack was added at Ms. Steven's request. Qwest further alleged it is Qwest policy to quote jack charges when customers request extra work, the order indicated she was offered installment billing, and Qwest does not offer installment billing on charges as low as \$15.52. Qwest further alleged the \$99 charge was legitimate and stated it would honor the previous offer of the one-half credit.

On January 24, 2003, Board staff issued a proposed resolution describing these events and finding that the one-half credit adjustment of \$49.50 was a reasonable solution. The letter informed Ms. Stevens of the procedure if she

disagreed with the proposed resolution. Ms. Stevens did not challenge the proposed resolution.

On February 7, 2003, the Consumer Advocate petitioned the Board to commence an administrative proceeding to impose a civil penalty. The Consumer Advocate argued that Qwest's placing the \$99 charge on Ms. Steven's telephone bill was a violation of Iowa's anti-cramming law, Iowa Code § 476.103 (2003). The Consumer Advocate further argued that the proposed resolution might be a reasonable solution to a private controversy without a public policy dimension, but it did not vindicate the public policy and statute against cramming. The Consumer Advocate requested a formal proceeding and argued a civil penalty should be imposed in an amount designed to deter future cramming violations by Qwest.

On February 27, 2003, Qwest filed a response to the Consumer Advocate's petition and a motion to dismiss the petition. Qwest argued that cramming involves the addition or deletion of a product or service on an account without the customer's verified consent. 199 IAC 22.23. However, Qwest argued, the customer specifically directed Qwest to enter her premises and install a second line and a jack inside her home. Qwest alleged the Qwest technician remained in Ms. Stevens' home for nearly two hours to complete the installation. In addition, Qwest stated that the customer representative that communicated with Ms. Stevens believes that he quoted the \$99 rate to her. Further details are contained in the response. Qwest argued that charging \$99 when the customer claims she was quoted a charge of

\$15.52 is not cramming and denied it violated Iowa Code § 476.103. Qwest argued that even if it inadvertently misquoted the appropriate charge, the \$99 charge is in Qwest's catalog, and Qwest cannot charge rates different from the catalog prices to similarly situated customers. Qwest argued that since it offered to adjust the charge in compromise and Board staff accepted this as a reasonable resolution, the Consumer Advocate's continued challenge of the resolution was unreasonable. Qwest requested the Board dismiss the case. Page three of the response is missing. Qwest should refile the document with page three included.

On March 4, 2003, the Consumer Advocate filed a reply memorandum. The Consumer Advocate argued the gravamen of the complaint is not that Qwest charged Ms. Stevens a rate different than the rate it quoted her for the jack installation, but that Qwest charged her \$99 for a jack installation that she did not need and did not authorize. The Consumer Advocate disputed Qwest's version of the facts, and stated Ms. Stevens alleges a jack was already in place, that no jack installation was needed or authorized, and that no jack was installed. According to the Consumer Advocate, Ms. Stevens alleges the technician was at her home for no more than ten minutes. The Consumer Advocate argued this is a factual dispute and dismissal is inappropriate.

On January 8, 2004, the Board issued an order finding sufficient information to warrant further investigation, docketing the proceeding, and ordering the parties to

submit a status report. On January 26, 2004, the parties filed a joint status report stating that each party adheres to its previously stated position.

On January 30, 2004, the Board issued an order finding the status report inadequate and assigning the case to the undersigned administrative law judge. On February 2, 2004, the Consumer Advocate filed a supplemental status report.

Pursuant to Iowa Code §§ 476.3(1) and 476.103(4), and 199 IAC 6.5, a procedural schedule will be established and a hearing regarding this complaint will be held if needed.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 1.8, 22.23, and Chapters 6 and 7. A link to the Board's administrative rules (in the Iowa Administrative Code (IAC)) is contained on the Board's website at www.state.ia.us/iub.

The issues

The factual issues in this case generally involve the \$99 charge for a jack and wiring on Ms. Stevens' December 2002 Qwest bill, how long the technician was in Ms. Stevens' home, and whether the Qwest technician installed the jack and wiring when the technician came to Ms. Stevens' home. The legal issues arising from this factual dispute include whether Qwest violated Iowa's anti-cramming law and whether imposition of a civil penalty is appropriate. Other issues may be raised by the parties prior to and during the hearing.

Prepared testimony and exhibits

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3).

Party status and communication with the Board

The Consumer Advocate and Qwest are currently the parties to this proceeding. If Ms. Stevens wishes to be a party to this case, she must notify the

Board in writing in conformance with the procedural schedule established in this order.

Each party must file an appearance identifying one person upon whom the Board and the other parties may serve all orders, correspondence, or other documents. 199 IAC 7.2. The written appearance must substantially comply with 199 IAC 2.2(15). The appearance must include the docket number of this case as stated in the caption above. Appearances must be filed at the earliest practical time with the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance must be accompanied by a certificate of service that conforms to 199 IAC 2.2 and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of the communication should also be sent at the same time to each of the other parties to this proceeding. These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

Ex parte communication is prohibited as provided in Iowa Code § 17A.17. Parties or their representatives and presiding officers shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except

upon notice and an opportunity for all parties to participate. The undersigned administrative law judge is the presiding officer in this case.

Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceedings, identified as Docket No. C-03-21, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at (515) 281-5563. There will be a charge to cover the cost of the copying.

All parties should examine Iowa Code §§ 476.3, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

Stipulation of Facts and Prehearing Brief

The facts underlying this case have already been the subject of an informal complaint proceeding. Therefore, it is appropriate that the parties file a stipulation of facts, so that only facts in dispute need be resolved in this formal complaint proceeding. In addition, it is appropriate that the parties file prehearing briefs that identify and discuss their respective positions. Finally, the parties must discuss whether it is possible to settle this case without further formal proceedings and the involvement of the undersigned administrative law judge.

IT IS THEREFORE ORDERED:

1. If the parties are unable to settle this case, on or before February 19, 2004, the parties must file a document stipulating to as many of the facts in this case as possible. The stipulation must also identify which facts remain in dispute and need to be resolved. The parties must also state whether they believe a hearing is necessary in this case, or whether the case could be submitted on the stipulated facts, prefiled testimony and evidence, and the prehearing briefs. If Ms. Stevens wishes to become a party to this case, she must file written notice with the Board no later than February 19, 2004, and must join in the stipulation of the parties.

2. If the parties are unable to stipulate to all the facts of this case, prefiled testimony and exhibits must be filed only with respect to the facts that remain in dispute and need to be resolved in this proceeding.

3. If needed pursuant to paragraph two, on or before February 26, 2004, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits and a prehearing brief. If Ms. Stevens becomes a party and wishes to file prepared direct testimony and exhibits, they must be filed on or before February 26, 2004. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate and any intervenors must address the issues discussed above, and file any other evidence not previously filed. The Consumer

Advocate should use exhibit numbers one and following. In its prehearing brief, the Consumer Advocate must state what actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable law.

4. If needed pursuant to paragraph two, on or before March 11, 2004, Qwest must file prepared testimony and exhibits and a prehearing brief. Qwest may refer to any document in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, Qwest must address the issues discussed above and file any other evidence not previously filed. Qwest should use exhibit numbers 100 and following. In its prehearing brief, Qwest must state what actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable law. Qwest must refile its "Response of Qwest Corporation to Petition for Proceeding to Impose Civil Penalty and Motion to Dismiss the Petition" originally filed with the Board on February 27, 2003, taking care that page three is included in the document.

5. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits, it must do so by March 18, 2004.

6. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Wednesday, March 24, 2004, commencing at 10 a.m. Each party must

provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at 1-515-281-5256 no later than Friday, March 19, 2004, to request that appropriate arrangements be made.

7. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

8. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 5th day of February, 2004.